

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-300**

CHRIS W. JONES

APPELLANT

**VS. FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

KENTUCKY TRANSPORTATION CABINET

APPELLEE

*** **

The Board, at its regular June 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 11, 2016, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 17th day of June, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Mr. Chris W. Jones
Mr. J. R. Dobner

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-300

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VS.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

TRANSPORTATION CABINET

APPELLEE

** ** ** ** **

This matter came on for evidentiary hearing on March 10, 2016, at 9:45 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. John C. Ryan, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

Appellant, Chris W. Jones, was present and was not represented by legal counsel. Appellee, Transportation Cabinet, was also present and represented by the Hon. William H. Fogle.

This matter was the subject of at least one pre-hearing conference which was conducted to define the issues, address any other matters relating to the appeal, and to discuss the option of mediation. In due course, mediation did not occur.

BACKGROUND

1. By letter of October 22, 2015, over the signature of Carol Beth Martin, Appointing Authority, Christopher W. Jones of Manchester, Kentucky, was dismissed from his position. The letter, a true copy of which is attached hereto as **“Recommended Order Attachment A,”** recites a menu of previous corrective actions, including at least four suspensions during his tenure with the agency, and essentially terminates his services for lack of good behavior.

2. Mr. Jones took issue with this action, under the appropriate category of “dismissal,” by appeal before this Board entered on December 11, 2015. He wrote therein in support of his position:

My dismissal was part of an ongoing campaign of harassment. I was singled out for things others were not even spoken to about. I was denied training and told it was not available. I was dismissed for a mistake on a timesheet that was easily correctable, when others were given that opportunity. Sherri Chappell admitted to me that others were making similar mistakes and were not even questioned. (sic)

3. Upon convening the evidentiary hearing, the Agency, assigned the burden of proof under standard procedure, presented the testimony of **Sherri Chappell**, who is Chief District Engineer of District 11 based in Clay County. She depicted her duties as wide ranging, including, but not limited to, the oversight of 300 or more personnel employed in the district and the care and maintenance of at least 3,000 miles of roadway belonging to the Commonwealth. Appellant numbered among her personnel, serving as an Administrative Specialist II in the main office. His duties consisted of assignment to the front desk at the office, minding the switchboard, greeting the public, and related duties as assigned him.

4. The witness explained that timesheets for all personnel were physically maintained in the vicinity of Appellant's workstation. The standard procedure was and is that as employees complete their workday they fill out and sign these timesheets. It was recognized that on occasion the timekeeper was required to "track down" some staff, get their hours, and have them sign the completed sheets and, occasionally, these ran more than one day behind. However, certain discrepancies were noticed with Appellant's timesheets in that some days were claimed as worked when staff was aware that he was not there. This circumstance ranged back to 2014; the witness recalled that, although in some instances he did not appear upon his allotted days off, he nonetheless claimed to have worked. One or more similar events were observed; specifically, his timesheet for July 30, 2015 reflected his having signed-in, whereas he was not on duty. Given this latest episode, she submitted a request for disciplinary action, a copy of which she presented as part of her testimony. The witness also offered examples of the timesheets under scrutiny and a series of correspondence pertaining to the on-going problem. She noted that in those instances when Appellant did not show up for work, other staff were required to fill in for him and either perform double-duty or postpone their own chores.

5. Under brief cross-examination, the witness conceded that not all staff timesheets were timely submitted or produced each day and in some instances ran two or three days behind. She also recognized that in some instances the timekeeper was forced to locate certain personnel, obtain their hours, complete the timesheets, and then have the employee sign them.

6. **J. R. Dobner** holds the position of Executive Advisor for the Office of Resource Management within the Transportation Cabinet. He numbers among his duties essentially all aspects assigned to that office, including analysis and issuance of disciplinary actions as the requests are received from throughout the Commonwealth within the Agency. He is also a

designated Appointing Authority. It was he who drafted both Appellant's intent to dismiss letter and his dismissal letter. He noted that, commensurate with standard operating procedure, Appellant was afforded the opportunity of a pre-termination hearing in the notice of intent to dismiss, which he did exercise. The witness recalled that Appellant insisted at his pre-termination hearing that the improperly completed timesheet was a "mistake" and that he merely entered an incorrect date.

7. The witness explained that, in light of Appellant's claim that he inadvertently sought salary for a date which he did not work, he ordered up and thoroughly reviewed the relevant records, timesheets, and other material. This analysis indicated to him that it was extremely unlikely Appellant made a simple mistake, considering his various opportunities to enter the correct information. In addition, he explained, due to the structure and makeup of the records and their mode of entry, it would have been quite difficult to become confused as to when he was on duty and when he was not. The conclusion was that Appellant deliberately sought and was paid for 7.50 hours salary for July 30, 2015, whereas he did not work that day.

8. The witness acknowledged that the one falsified timesheet, while egregious, would not, standing alone, have justified dismissing Appellant. However, the agency employs a progressive discipline policy. He introduced a series of previous penalizations and disciplines assessed Appellant. These range from a written reprimand most recently in May, 2015 (for abuse of time and attendance requirements), and up to a 30-day suspension in September, 2015, for poor work performance. He noted that one or more of the disciplines pertain to Appellant's chronically aberrant work attendance, and he viewed the most recent episode as a "lesson not learned." Consequently, in light of his overall, long-term behavior, management considered Appellant's services no longer in its best interest.

9. Under quite brief cross-examination, the witness ratified that, absent the series of previous disciplines, Appellant "probably" would not have been dismissed solely due to this most recent episode.

10. The Agency having completed its proof-in-chief, Appellant **Chris Jones** offered his own testimony. He confirmed that he previously held the position of Accountant II with the Agency and conceded that during his sixteen or more years with the Commonwealth, he has made various mistakes on the job. He recalled that when he commenced with the Agency, he was an Equipment Operator. Upon completion of college, his supervisor at the time felt that he would fit well working in the office. He assumed those duties, preparing payroll and paying invoices.

11. Appellant undertook to explain and discuss one or more of the previous disciplines assessed him, outlined in the dismissal letter. He urged that the sequence of disciplines demonstrates a form of on-the-job harassment of him. He felt that he was singled-out

for these punishments, whereas others similarly situated escaped any discipline for the same "mistakes." He further urged that one or more of the penalties occurred because he simply did not know what was required. He requested training which was denied and, instead of providing training, management merely penalized him for not performing correctly. Further, he urged, he obtained advice variously along the way, but was discouraged by those with whom he consulted from challenging the suspensions. He urged that they variously suggested that events would pass and matters would resolve themselves. Accordingly, he insisted, he had mostly accepted the punishments without question but, nonetheless, felt that he was being harassed throughout the sequence.

12. Appellant alluded to a form of discrimination toward him arising from certain aspects attendant to the political position of his father. He conceded he had no proof of this, other than his own belief, and he could locate no one who would step forward and support this claim. He was aware that he could subpoena witnesses for this hearing, but chose not to do so. He also claimed to have had relatively good employee evaluations, but conceded he brought no copies to support this.

13. Under very brief cross-examination, Appellant acknowledged that his supervisor counseled with him from time-to-time about correctly completing timesheets and his personnel file confirmed this. He recognized that, notwithstanding the counseling, he had continued to make mistakes. He repeatedly urged that others did so as well and were not disciplined or fired for those kinds of errors. There being no further testimony, the sworn proof was concluded and the matter stood submitted for a recommended order.

14. KRS 18A.095 (1) requires that "a classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause."

15. 101 KAR 1:345 is the regulation pertaining to the imposition of disciplinary actions. Specifically, Section 1 thereof provides that "appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties." Section 2, thereof, addresses the subject of "dismissal" and essentially blueprints the handling of the notice of intent and the dismissal letter. Appellant has not challenged these procedural aspects.

FINDINGS OF FACT

The Hearing Officer makes the following findings by a preponderance of the evidence:

1. Until October 23, 2015, Appellant, Chris W. Jones, served in the position of Administrative Specialist II with the Transportation Cabinet, Department of Highways, with his workstation in the District 11 office at Manchester, Kentucky. Included among his duties was

the manning of the front office information desk, ordinarily dealing with the public and the telephonic switchboard, and management of paperwork duties including timesheets, at least some of which are kept at that desk for ease-of-access by other personnel employed there. The proof indicates that supervision and management of these timesheets admittedly sometimes lags, ordinarily when personnel overlook completing them for a particular day. On occasion, the timekeeper is required to locate a particular employee and obtain the information, complete the form, and have the particular employee sign off. This was not seen as unusual by management.

2. Appellant, a sixteen-year employee, was previously counseled concerning the proper and accurate completion of his own time logs and was penalized for his failure in that regard upon one or another occasion. Sometime following July 30, 2015, management observed that he improperly sought compensation for work done on July 30; specifically, it was established that he did not work that day but, nonetheless, claimed 7.50 hours of salary and benefits. The proof does not establish whether he received the salary, but Appellant does not dispute submitting the incorrect time, his position being that he made a mistake.

3. The agency employs a progressive discipline policy, and it viewed that this latest misstep, in light of the previous lectures, warnings, and penalizations, signaled Appellant's inability, or refusal as the case may be, to follow protocol. Given the total of six negative actions attempting to correct his behavior during his tenure, including three within approximately two years, one of which was a 30-day suspension for poor work performance, the Agency viewed that any benefits derived from his service no longer justified retention thereof.

4. Appellant, for his part, urges that the actions of management toward him have been discriminatory, pointing to the punitive series ranging back through March 2001. He alludes to the political status of his father, and asserts that some or all of his previous penalizations were not challenged due to advice of one or another advisor not to do so. He presents, however, no proof of any discrimination other than his own testimony and belief.

5. The Hearing Officer finds that the testimony of all witnesses and that of Appellant to be credible.

CONCLUSIONS OF LAW

1. The Agency, as it must, couches its dismissal of Appellant upon the regulation which addresses general lack of good behavior, i.e. 101 KAR 1:345. The facts triggering the latest action are not in dispute, since Appellant admits turning in an incorrect timesheet while insisting it was a mistake, and the Agency readily concedes that this event, if a first offense standing alone, would not support his dismissal. Instead, it points to what it perceives to be a chronic problem with his behavior, giving rise to a string or series of penalizations over the

years, of which the most recent is the latest episode. The implication is that the processing of each discipline amounts to a disruption of flow within the district, necessitating action by his supervisor and upper management to deal with his behavior, resulting in various amounts of time spent upon non-productive effort, all derogatory to the best interests of the Agency.

2. As to his assigned burden of proof, Appellant points to the discipline sequence as evidence of long running discrimination towards him by management, and alludes to the status of his family, namely his father. He also alleges that he received bad advice concerning disposition of one or another of the previous penalizations and that he variously received good evaluations. However, he has not utilized the opportunity presented by this appeal to bring forth any proof to support any of these claims, either through testimony of others or documentation. The conclusion must be that after 16 years with the Agency Appellant should have either sufficiently familiarized himself with the protocol expected of him by the employer to avoid further discipline, or brought forth adequate grounds to establish that his rights under KRS Chapter 18A have been violated.

3. The agency has sustained its burden of proof by the preponderance of the evidence, and the termination of Appellant for of lack of good behavior was neither erroneous nor excessive in light of the overall circumstances.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **CHRIS W. JONES VS. TRANSPORTATION CABINET (APPEAL NO. 2015-300)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer John C. Ryan** this 11th day of May, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Mr. Chris W. Jones
J. R. Dobner



TRANSPORTATION CABINET

Frankfort, Kentucky 40622
www.transportation.ky.gov/

Steven L. Beshear
Governor

Michael W. Hancock, P.E.
Secretary

October 22, 2015

Christopher W. Jones
[REDACTED]
[REDACTED]

Personnel Number: [REDACTED]

Re: Dismissal (Corrected Letter)

Dear Mr. Jones:

After considering your statements presented at your pre-termination hearing held on Tuesday, October 20, 2015, I have not found sufficient reason to rescind or alter the intent to dismiss letter dated September 16, 2015. This letter serves as notification that you are officially dismissed from your position as an Administrative Specialist II with the Kentucky Transportation Cabinet (KYTC), Department of Highways, District Eleven effective the close of business Friday, October 23, 2015.

In accordance with KRS 18A.095 and 101 KAR 1:345, cause exists for your dismissal based on the following specific reason:

Lack of Good Behavior: You were off work on July 30, 2015. Upon your return to work you recorded your time on the Daily Attendance and Project Report for July 30, 2015, as working from 7:30 a.m. – 3:30 p.m., with a 30 minute lunch break from 11:00 a.m. – 11:30 a.m., with a total of 7.5 hours worked.

You have engaged in and been counseled for this type of misconduct in the past. On September 30, 2014, you did not report to work. Upon your return to work you recorded your time on the Daily Attendance and Project Report for September 30, 2014, as 7.5 hours worked. You were counseled by Sherri Chappel, Executive Director, to record your time properly. On September 11, 2014, September 15, 2014, September 30, 2014, and October 28, 2014, you were counseled by Chappell for reporting your time incorrectly on the Daily Attendance and Project Report for each of those days.

RECOMMENDED ORDER ☐

ATTACHMENT A

Kentucky
UNBRIDLED SPIRIT

— An Equal Opportunity Employer M/F/D

APPELLEE'S
EXHIBIT

#5

The above offense is in violation of Personnel Board Regulation 101 KAR 1:345, Section 1 because you falsified your timesheet and claimed 7.5 hours of time worked to which you were not entitled.

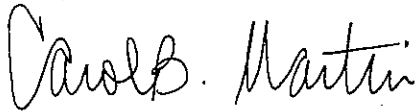
You have received the following corrective actions:

<u>Date</u>	<u>Reason</u>	<u>Action</u>
May 20, 2015	Poor time and attendance	Written reprimand
September 16, 2013	Poor work performance	30 day suspension
June 3, 2013	Poor work performance	1 day suspension
October 16, 2007	Lack of good behavior	10 day suspension
June 9, 2005	Misconduct	10 day suspension
March 26, 2001	Misconduct	5 day suspension

Pursuant to KRS 18A.032, you will not be certified on future registers for employment within the KYTC unless the KYTC so requests.

As you are an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. To appeal, you must complete the attached form and direct it to the address indicated on the form. Copies of KRS 18A.095 and 101 KAR 1:365 concerning appeal and hearing procedures are also attached.

Sincerely,



Carol Beth Martin
Appointing Authority

CBM/jrd

Attachment

cc: Personnel Board
Personnel Cabinet
State Highway Engineer
Sherri Chappell, Executive Director